

SUPPLEMENTARY GENERAL CONDITIONS

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1. Owner/Contractor Agreement (See CONTRACT AGREEMENT)
2. Notice to Proceed & Pre-Construction Conference

A written Notice to Proceed shall be issued to the Contractor after receipt of the following: proof of required insurance, an EEO poster has been posted in a conspicuous place at the job site, the Contractor has designated an EEO Coordinator, the Federal Wage Decision has been posted in a conspicuous place, the Contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements has been submitted to the project manager, and the Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements has been submitted to the awarding authority. No work shall be performed by the Contractor until he has received the Notice to Proceed.

Prior to the start of construction, the Contractor, all subcontractors, the project manager, and the owner shall attend a pre-construction conference. The conference will serve to acquaint the participants with the general plan of contract administration and requirements under which the construction operation is to proceed, and will inform the Contractor, in detail, of the obligations imposed on him and his subcontractors by the Executive Orders concerning Equal Employment Opportunity and Davis-Bacon Act requirements and other Federal labor standards requirements.

The date, time, and place of the conference will be furnished to the Contractor by the project manager.

3. Funding Source

The project to be constructed and pursuant to this Contract will be financed with assistance from the Massachusetts Community Development Block Grant Program (MCDBG) and is subject to all applicable Federal, State and local regulations.

4. Contract Plans and Specifications

All plans, specifications and addenda, hereinafter enumerated or referenced in this contract, shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein set fully forth. The table of contents, titles, headings, running headlines and marginal notes contained herein, and in said documents, are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

5. Additional Instructions and Detail Drawings

The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

The Contractor and the Project Engineer will prepare jointly: (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Project Engineer in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

6. Shop or Setting Drawings

The Contractor shall submit promptly to the Project Engineer two copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Project Engineer and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Project Engineer with two corrected copies. If requested by the Project Engineer, the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Project Engineer, the Contractor will nevertheless be responsible for the accuracy of such drawings and for their conformity to the plans and specifications, unless he notifies the Project Engineer in writing of any deviations at the time he furnishes such drawings.

7. Materials, Services and Facilities

- (a) It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature and all other services and facilities of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.
- (b) Any work necessary to be performed after regular working hours, on Sunday or Legal Holidays, shall be performed without additional expense to the Owner.

8. Contractor's Title to Materials

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

9. Title to Work

The title to all work completed and in the course of construction and of all material on account of which any payment has been made shall be in the Owner.

10. Inspection and Testing of Materials

- (a) All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. The Owner will pay for all laboratory inspection service direct, and not as a part of the Contract.
- (b) Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

11. Express Warranty

The Contractor guarantees to Owner that all materials incorporated into the work will be new unless otherwise specified or agreed. Contractor also guarantees that all work will be done in a workmanlike manner, free from defects, and in conformance with any specifications mentioned in this contract.

12. Maintenance and Guarantee

The Contractor hereby guarantees that the entire work constructed by him under the contract will meet fully all requirements thereof as to quality of workmanship and of materials furnished by him. The Contractor hereby agrees to make at his/her own expense any repairs or replacements made necessary by defects in materials or workmanship supplied to him that become evident within one (1) year after the date of the final payment, and to restore to full compliance with the requirements set forth herein for any part of the work constructed hereunder, which during said one (1) year period is found to be deficient with respect to any provisions of the specifications. The Contractor also agrees to hold the Owner harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for same from the Owner. If the Contractor fails to make the repairs and replacements promptly, the Owner may do the work and the Contractor shall be liable to the owner for the cost thereof.

13. "Or Equal" Clause

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any materials, article or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the Project Engineer, of

equal substance and function. It shall not be purchased or installed by the Contractor without the Project Engineer's written approval.

14. Surveys, Permits and Regulations

Unless otherwise expressly provided for in the specifications, the Owner will furnish to the Contractor all surveys necessary for the execution of the work.

The Contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of his contract, and shall comply with the provisions of 24 CFR 85.36(h)(1)-(3) and Massachusetts General Laws with respect to bonding or other insurance requirements.

The Contractor shall comply with all laws, ordinances, rules, orders and regulations relating to performance of the work, the protection of adjacent property and the maintenance of passageways, guard fences or other protective facilities.

15. Contractor's Obligations

The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract, within the time herein specified, in accordance with the provisions of this Contract and said specifications and in accordance with the plans and drawings covered by this Contract any and all supplemental plans and drawings, and in accordance with the directions of the Project Engineer as given from time to time during the progress of the work. He shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required.

The contractor shall observe, comply with, and be subject to all terms, conditions, requirements and limitations of the Contract and specifications, and shall do, carry on and complete the entire work to the satisfaction of the Project Engineer and the Owner.

16. Weather Conditions

In the event of temporary suspension of work, or during inclement weather, or whenever the Project Engineer shall direct, the Contractor will, and will cause his Subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Project Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the Contractor.

17. Protection of Work and Property - Emergency

The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Contract. He shall at all times safely guard and protect his own

work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such he caused directly by errors contained in the Contract or by the Owner, or his duly authorized representatives.

In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Project Engineer, in a diligent manner. He shall notify the Project Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Project Engineer for approval.

Where the Contractor has not taken action but has notified the Project Engineer of an emergency threatening injury to persons or damage to the work or any adjoining property, he shall act as instructed or authorized by the Project Engineer.

The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 21 below.

18. Inspection

The authorized representatives and agents of the Owner, the Executive Office of Housing and Livable Communities (EOHLC), the Commonwealth, the grantee, and the Department of Housing and Urban Development (HUD) shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records.

19. Reports, Records and Data

The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the Owner may request concerning work performed or to be performed under this Contract. All records must be retained by the Contractor for a period of seven years from completion of the work.

20. Superintendence by Contractor

At the site of the work, the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Project Engineer and shall be one who can be continued in that capacity for the particular job involved unless he ceases to be on the Contractor's payroll.

21. Changes in Work

No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- (a) Unit bid prices previously approved.
- (b) An agreed lump sum.
- (c) The actual cost of:
 - (1) Labor, including foremen.
 - (2) Materials entering permanently into the work.
 - (3) The ownership or rental cost of construction plant and equipment during the time of use on the extra work.
 - (4) Power and consumable supplies for the operation of power equipment.
 - (5) Insurance.
 - (6) Wages to be paid.

To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

22. Time for Completion and Liquidated Damages

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "Notice to Proceed."

The Contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a partial consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work.

The said amount of liquidated damages is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would sustain in such event and said amount shall be retained from time to time by the Owner from current periodic estimates.

It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- (a) To any preference, priority or allocation order duly issued by the Government.
- (b) To unforeseeable cause beyond the control and without the fault of negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and severe weather.
- (c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

Provided further, that the Contractor shall within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

23. Correction of Work

All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Project Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture and methods of construction for the purposes for which they are used. Should they fail to meet his approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at his own expense. Rejected materials shall immediately be removed from the site. If, in the opinion of the Project Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Project Engineer shall be equitable.

24. Subsurface Conditions Found Different

Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the plans or indicated in the specifications, he shall immediately give notice to the Project Engineer of such conditions before they are disturbed. The Project Engineer will thereupon promptly investigate the conditions, and if he finds that they materially differ from those shown on the plans or indicated in the specifications, he will at once make such changes in the plans and/or specifications as he may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 21 of the General Conditions.

25. Right of Owner to Terminate Contract

The Owner may terminate this Contract by providing the Contractor and the Surety with 10 days written notice specifying the reasons for termination as outlined below:

- (a) Violation of any of the provisions of this Contract by the Contractor or any of his/her subcontractors.
- (b) A determination by the Owner that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Contract.
- (c) Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Contract including compliance with applicable federal, state or local laws or regulations, and such procedures or guidelines as may be established for the Massachusetts Community Development Block Grant Program by the Executive Office of Housing and Livable Communities (EOHLC);
- (d) Cancellation, revocation, suspension or termination by HUD of the grant agreements to the Commonwealth under which the Owner's Community Development Block Grant Agreement is made, or the portion thereof funding this contract.

In the event of any such termination, the Surety shall have the right to take over and perform the Contract; provided, however, that if the Surety does not commence performance within ten (10) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute the same to completion at the expense of the Contractor and the Contractor and his Surety shall be liable to the Owner for any excess cost occasioned by the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances and plant as may be on the site of the work and necessary therefore.

If the Owner determines that a continuation of work on the project would endanger the life, health, or safety of those working or living at or near the project site, or that immediate action is necessary to protect public funds and/or property, the Owner may

suspend work or terminate this agreement by providing notice to the Contractor in the form of telegram, mailgram, hand-carried letter, or other appropriate written means.

26. Payments to Contractor

- (a) Not later than the twenty-eighth day of each calendar month the Owner shall make a progress payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this Contract, but to insure the proper performance of this Contract, the Owner shall retain five percent (5%) of the amount of each estimate until final completion and acceptance of all work covered by this Contract; provided, that the Contractor shall submit his estimate not later than the first day of the month; provided, further, that on completion and acceptance of each separate building, public work or other division of the Contract, on which the price is stated separately in the Contract, payment may be made in full, including retained percentages thereon, less authorized deductions.
- (b) In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.

27. Indemnification

The Contractor shall comply with the requirements of all applicable laws, rules and regulations in connection with the services of the Contractor, and shall exonerate, indemnify and hold harmless the Owner's officers, agents, and all employees from and against them, and local taxes or contributions imposed or required under the Social Security, Worker's Compensation, and Income Tax laws. Further, the Contractor shall exonerate, indemnify and hold harmless the Owner with respect to any damages, expenses or claims arising from or in connection with any of the work performed or to be performed under this Contract. This shall not be construed as a limitation of the Contractor's liability under the Contract or as otherwise provided by law.

28. Acceptance of Final Payment Constitutes Release

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor. No payment, however, final or otherwise, shall operate to release the Contractor or his Sureties from any obligations under this Contract or the performance and payment bond.

29. Insurance

The Contractor shall not commence work under this Contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any Subcontractor to commence work on this subcontract until the insurance required of the subcontractor has been so obtained and approved.

(a) Workmen's Compensation Insurance:

The Contractor shall procure and shall maintain during the life of this contract Workmen's (Worker's) Compensation Insurance as required by applicable State law for all of its employees to be engaged in work at the site of the project under this contract and, in case of any such work, sublet, the Contractor shall require the subcontractor similarly to provide Workmen's (Worker's) Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's (Worker's) Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his/her employees as are not otherwise protected.

(b) Scope of Insurance and Special Hazards:

The insurance required hereunder shall provide adequate protection for the Contractor and its subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by it and, also against any of the special hazards which may be encountered in the performance of this contract as enumerated elsewhere in this document.

(c) Proof of Carriage of Insurance:

The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expirations of policies. Such certificates shall also contain substantially the following statement; "The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the Owner."

(d) Builder's Risk Insurance (Fire and Extended Coverage):

Until the project is completed and accepted by the Owner, the Contractor is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the Owner, the Contractor, and Subcontractors as their interests may appear.

(e) Owner's Protective Liability Insurance:

The Contractor shall take out and furnish to the Owner and maintain during the life of this contract complete Owner's Protective Liability Insurance in amounts as specified in Paragraph (f)(D) below, for Bodily Injury Liability Insurance and for Property Damage Liability Insurance.

(f) Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance:

The Contractor shall secure and maintain during the life of the Contract such insurance policies as will protect himself, his Subcontractors and the Owner from claims for bodily injuries, death or property damage which may arise from operations under the Contract whether such operations be by himself or any Subcontractor or anyone employed by them directly or indirectly.

- A. For insurance purposes, the site of work and/or the project site includes not only the limited physical work areas involved but also certain other areas of operations set up for utility, sanitary, electrical, water, pollution control, disposal and cleaning purposes; to furnish materials for the work including storage and stock pile areas and all routes between and among them.
- B. Contractor and Subcontractor(s) shall provide a comprehensive general liability policy with a combined single limit provisions for bodily injury and/or property damage of a minimum of \$1,000,000 written on an occurrence basis. Include XCU coverage (explosion, collapse and underground) and fire protection for property under their care, custody and control.
- C. Comprehensive Automobile Liability and Property Damage Insurance. The Contractor shall provide comprehensive automobile liability insurance with a single provision, written on an occurrence basis, covering all owned vehicles, hired vehicles, or non-owned vehicles for all personal and property damages arising out of bodily injuries, death or destruction of property and subject to minimum limits below.
- D. The Town shall be named as an additional insured on all policies of liability insurance.

The minimum limits of liability of such insurance shall be as follows:

General (Comprehensive) Liability

Bodily Injury or Death – Each Person	\$500,000
Bodily Injury or Death – Each Accident	\$1,000,000
Property Damage – Each Accident	\$500,000
Property Damage – Aggregate	\$2,000,000

Automobile and Truck Liability

Bodily Injury or Death – Each Person	\$500,000
Bodily Injury or Death – Each Accident	\$1,000,000
Property Damage – Each Accident	\$200,000
Property Damage – Aggregate	\$1,000,000

(g) Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance:

The Contractor shall either (1) require each of his Subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified below, or (2) ensure the activities of his policy, specified in subparagraph (b) hereof.

30. Flood Disaster Protection

The owner of land subject to acquisition or improvement under this contract, and its successors or assigns, are hereby obligated to obtain and maintain, during ownership of the land which is the subject of this contract, such flood insurance as is required with respect to financial assistance for acquisition or construction purposes under section 102 (a) of the Flood Disaster protection Act of 1973. This obligation is binding notwithstanding the fact that construction on the land which is the subject of this contract is not itself funded out of assistance provided under the Housing and Community Development Act of 1974, as amended.

31. Assignments

The Contractor shall not assign or subcontract the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the Owner. In case the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this Contract.

32. Project Engineer's Authority

The Project Engineer shall give all orders and directions contemplated under this Contract and specifications relative to the execution of the work. The Project Engineer shall determine the amount, quality, acceptability and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Project Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto

relative to said Contract and specifications, the determination or decision of the Project Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

The Project Engineer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute.

33. Notice and Service Thereof

Any notice to any Contractor from the Owner relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to the said Contractor at his last given address, or delivered in person to the said Contractor or his authorized representative on the work.

34. Subcontract

The Contractor will insert in any subcontracts the Federal Labor Standards Provisions contained herein and such other clauses as the Department of Housing and Urban Development (HUD) may, by instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

35. Interest of Member of or Delegate to Congress

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

36. Other Prohibited Interests

No official of the Town who is authorized in such capacity and on behalf of the Town to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, Engineer, attorney, engineer or inspector of or for the Town who is authorized in such capacity and on behalf of the Town to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract or any other contract pertaining to the project.

37. Suspension of Work

Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay with such determination to be set forth in writing.

38. Access to Records

The Contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Municipality to assure proper accounting for all project funds, both CDBG and non-CDBG shares. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for seven years after grant closeout.

39. Age Discrimination Act of 1975 (for contracts over \$2,000)

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination from receiving Federal financial assistance.

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

The Age Discrimination in Employment Act prohibits arbitrary age discrimination in employment.

40. Non-Discrimination: Minority Business Enterprise

It is the policy of the State of Massachusetts and the Town of Northbridge that Minority Business Enterprises (MBE's) as defined in the Code of Federal Regulations, 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of this contract. Consequently, the MBE requirements of 49 CFR Part 23 apply to this contract.

41. Equal Employment Opportunity (Executive Order #11246)

This Contract is subject to Federal Executive Order 11246, as amended, and shall be subject to HUD Equal Employment Opportunity regulation at 24 CFR Part 130 applicable to HUD assisted construction contracts. The Contractor shall cause or require to be inserted in full in any nonexempt contract and subcontract for construction work as defined in said regulations which is paid in full or in part with assistance provided under this Contract, the following equal opportunity clause:

“During the performance of this Contact the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause.
- B. The Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap, or national origin.
- C. The Contractor shall send to each labor union or representative or workers with which they have a collective bargaining agreement or other contract or understanding, a notice advertising the said labor union or worker's representatives of the Contractor's commitment under this subsection and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will furnish all information and reports required by the grantee and will permit access to his books, records, and accounts by the grantee or the State for the purpose if investigation to ascertain compliance with the requirements set forth in this clause.
- E. The Contractor shall incorporate the foregoing requirements of this paragraph in all contracts for work to be performed in this paragraph in all contracts for work to be performed in accordance with this Contract and will require all of its subcontractors to incorporate such requirements in all subcontracts for program work.
- F. In the event of noncompliance by the Contractor with the nondiscrimination clauses of this Agreement or with any such rules, regulations, or orders of the Secretary of Labor, the Contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contract or federally assisted construction contract procedures authorized in Executive Order 11246, or by rules, regulations, or orders of the Secretary of Labor, as otherwise provided by law.”

The Contractor shall include the provisions set forth herein in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such actions with

respect to any subcontract or purchase order as HUD or MCDBG may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

42. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order #11246)

- A. The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade:	10%
Goals for female participation in each trade:	5%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor is also subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 (ten) working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor; estimated dollar amount of the subcontract; and the geographical area in which the contract is to be performed.

43. Non-Discrimination under Title VI of the Civil Rights Act of 1964

The Contractor shall adhere to the requirements set forth in Title VI of the Civil Rights Act of 1964 (Public Law 88-352), and the regulations issued pursuant thereto by HUD (24 CFR Part 1); Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), as amended; Section 109 of the Housing and Community Development Act of 1974, and the HUD regulations issued pursuant thereto (24 CFR 570.601); Federal Executive Order 11063, as amended by Executive Order 12259 and the HUD regulations issued pursuant thereto (24 CFR 107); Executive Order 11246 and the rules, regulations and relevant orders of the U.S. Secretary of Labor, if applicable; The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Section 402 of the Veterans of the Vietnam Era Act (for projects of \$10,000 or more). Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Massachusetts General Laws Chapter 151B, section 1 et seq.; State Executive Order 74 as amended and revised by Executive Orders 116,143 and 227, and Massachusetts CDBG Program regulations, procedures or guidelines; Title II of the Uniform Relocation Assistance and Real Property, Acquisition Policies Act of 1979; and MCDBG guidelines, procedures, or regulations.

44. Affirmative Action for Handicapped Workers (Section 504 of the Rehabilitation Act of 1973)

The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regards to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

In the event of the Contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided

by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 504 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

45. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era

- (a) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regards to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment or otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veteran status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- (b) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this Contract and those which occur during the performance of this Contract, including those not generated by the Contract and including those occurring at an establishment of the Contractor other than the one wherein the Contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment opening and hires as may be required. State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable opening with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs d and e.
- (c) Listing of employment opening with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source of effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment opening does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders of regulations regarding nondiscrimination in employment.
- (d) The reports required by paragraph b of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central

office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of nondisabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this Contract identifying data for each hiring location. The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the Contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.

- (e) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system when it is no longer bound by this contract clause.
- (f) This clause does not apply to the listing of employment openings that occur and are filled outside of the 50 states, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.
- (g) The provisions of paragraph b, c, d, and e of this clause do not apply to opening which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.
- (h) As used in this clause: (1) "All suitable employment openings" including, but not limited to, openings which occur in the following job categories: production and nonproduction, plant and office, laborers and mechanics, supervisory and nonsupervisory, technical, and executive, administrative and professional openings, are compensated on a salary basis of less than \$25,000 per year. This term includes full time employment, temporary employment of more than three days' duration, and part-time employment. It does not include openings that the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement or openings in an educational institution.
- (i) Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the government cannot reasonably be otherwise supplied, where listing would be contrary to national

security or where the requirement of listing would otherwise not be for the best interest of the government.

(j) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

46. Miscellaneous Provisions and Requirement Relating to Massachusetts CDBG Program Funding

The materials that follow including, but not limited to Federal Labor Standards Provisions, Anti-Kickback Act Regulations, Section 3 and Segregated Facilities, and Equal Employment Opportunity requirements relate to the CDBG Program grant which is the sources of funding for this Contract. The Contractor shall observe and follow the requirements specified within these materials, and elsewhere in this Document, during and following the period of the contract, as applicable. These materials and provisions shall become an integral part of the Contract Agreement between the Contractor and the Owner.

47. Termination of Contract

The Owner may suspend or terminate this Contract by providing the recipient with ten (10) days written notice for reasons outlined as follows:

1. Failure of the Grantee, for any reason, to fulfill in a timely and proper manner its obligations under this Contract including compliance with applicable federal, state or local laws or regulations, and such procedures or guidelines as may be established for the Massachusetts Community Development Block Grant;
2. Cancellation, revision, suspension or termination by HUD of the grant agreements to the Commonwealth under which the Owner's Community Development Block Grant Agreement is made, or the portion thereof funding this contract.

48. Federal Labor Standards Provisions

The following Federal Labor-Standards Provisions, including the provisions concerning maximum hours of work, with respect to the categories and classifications of employees hereinafter mentioned are included in this Contract pursuant to the requirements of applicable State or local laws. The inclusion of such provisions shall not be construed to relieve the Contractor or any Subcontractor from the pertinent requirements of any corresponding Federal Labor-Standards Provisions of this Contract. The limitations, if any, in these Massachusetts Labor-Standards Provisions upon the hours per day, per week or per month which employees engaged on the work covered by this Contract may be required or permitted to work thereon shall not be exceeded.

49. Schedule of Salaries and Wages

Both Federal Davis-Bacon minimum prevailing wages and Commonwealth of Massachusetts minimum prevailing wages are applicable to work performed under this contract. Both sets of applicable wage rates are contained in these contract documents. It is the responsibility of the contractor to pay the higher of the two wage rates for a work classification.

50. Environmental Requirements

The Contractor shall comply, where applicable, with: federal Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 et. seq.) particularly section 2 (a); the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et. seq.), as amended, particularly section 307 (c) and (d) (16 U.S.C. 1456 (c) and (d)); the Safe Water Drinking Act of 1974 (42 U.S.C. 201, 300 (f) et seq., and 21 U.S.C. 349), as amended; the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 (16 U.S.C. 1536); the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly section 7 (b) and (c) (16 U.S.C. 1278 (b) and (c)); the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, particularly section 176 (c) and (d) (42 U.S.C. 7506 (c) and (d)); HUD Environmental Criteria and Standards (44 FR 40860-40866, July 12, 1979); "The American Standard Specification for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped," Number A-117.4-R 1971, subject to the exceptions contained in 41 CFR 101-19-604; and any corresponding provisions of State and local laws and regulations. The Contractor shall also comply, where applicable, with the National Environmental Policy Act of 1969, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, Flood Disaster Protection Act of 1973, National Flood Insurance Act of 1968, and Protection of Wetlands Laws.

51. Historic Preservation

The Contractor shall, in the performance of environmental assessments under the National Policy Act, and the Massachusetts Environmental Policy Act, comply with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470), federal Executive Order 11593, and the Preservation of Archaeological and Historic Data Act of

1966 (17 U.S.C. 469 a-1 et seq.), by (a) consulting with the State Historic Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the proposed activity, and (b) complying with all requirements established by HUD to avoid or mitigate adverse effects upon such properties.

52. Compliance with Air and Water Acts (for contracts exceeding \$100,000)

In addition to the foregoing requirements, all nonexempt Contractors and Subcontractors shall furnish to the Owner, the following:

- A. A stipulation by the Contractor or Subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the Contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraphs A through D of this section in every nonexempt subcontract and requiring that the Contractor will take such actions as the Government may direct as a means of enforcing such provisions.

53. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention

A. Lead-Based Paint Hazards (applicable to contracts for construction or rehabilitation of residential structures)

The construction or rehabilitation of residential structures is subject to the HUD-Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and Subcontractors shall comply with the provisions for the elimination of lead-based paint hazards under sup-part B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14(f) thereof, and requirements of M.G.L. Ch.111, Sec. 190-191, and the regulations for Lead Poisoning.

54. Compliance with the Massachusetts CDBG Program Contract

Unless modified or changed by any special terms or conditions set forth in the Grant Contracts, all activities authorized by this Contract shall be subject to and performed in accordance with all other provisions of said Grant Contract, and all applicable federal, state, and local laws and regulations, including but not limited to those cited within the said Agreement, and any applicable regulations issued by HUD published in 24 CFR Part 570, as may be amended from time to time, and any procedures and guidelines as may be established by the Massachusetts CDBG Program.

55. Interest of Contractor and Employees

The Contractor covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this contract, no person having any such interest shall be employed. Further, the Contractor shall adhere to the provisions of the Hatch Act (5 U.S.C. 1501 et seq.) that limits political activities by employees whose principal employment is in connection with an activity which is financed in whole or in part by federal funds.

56. Statement – Political Activity Prohibited

None of the funds, materials, property or services provided directly or indirectly under this Contract may be used for any partisan political activity or to further the election or defeat of any candidate for public office.

57. Statement – Lobbying Prohibited

None of the funds provided under this Contract shall be used for publicity purposes designed to support or defeat legislation pending before the Congress.

58. Sales Tax

The materials and equipment purchased for permanent installation in the Work of this project are exempt from the Sales and Use Tax of the Commonwealth of Massachusetts. The Awarding Authority's tax exemption certificate number will be furnished to the Contractor.

59. Rights Reserved

The Owner reserves the right to change policy expounded herein due to policy changes dictated by Federal or State agencies.

60. **Severability**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

61. **Availability of Funds**

The compensation provided by this agreement is subject to the continued availability of federal funds for the Massachusetts Small Cities Program/MCDBG, and to the continued eligibility of the Commonwealth and the Owner to receive such funds.

62. **Confidentiality**

The Contractor will protect the privacy of, and respect the confidentiality of information provided by, program participants, consistent with applicable federal and state regulations, including M.G.L. C.66, section 10, regarding access to public records.

63. **Responsibility to the Public**

A. Laws to be Observed

The Contractor shall keep him/herself fully informed of all existing and future State and National laws and Municipal ordinances and regulations in any manner affecting those engaged or employed in the work or the materials used or employed in the work, or in any way affecting the conduct of the work, and all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same and of all provisions required by law to be made a part of this Contract, all of which provisions are hereby incorporated by reference and made a part thereof. If any discrepancy or inconsistency is discovered in the plans, drawings or specifications or Contract for this work in relation to any such law, ordinance, regulation, order or decree, he shall forthwith report the same to the Department in writing. S/He shall cause all his/her agents and employees to observe and comply with all such existing and future laws, ordinances, regulations orders and decrees.

B. Anti-Boycott Covenant (Executive Order #130)

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it or nay affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 9999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended. If there shall be a breach in the warranty, representation and agreement contained in this paragraph, then without limiting such other rights as it may have the Owner shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the Ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor.